

### Claim Rejections – 35 USC 103

Examiner has rejected Claims 1, 6, 12, 14 – 17, 24, 26 and 28 – 29 under 35 USC 103(a) as being unpatentable over Kashimoto in view of Carmean. Specifically, regarding Claim 1, Examiner has stated:

Kashimoto teaches a cooking appliance comprising a programmable control module (FIG. 4, Ref. 28), a heating device controlled by the programmable control module (Fig. 4, Ref. 28), a cooking location wherein the heating device is in communication with the cooking location to provide heat to the cooking location (FIG. 4, Ref. 27) and a remote computer in information communication with the programmable control module via a communication link (FIG. 14, Ref. 48).

Examiner then states:

Kashimoto does not teach that the remote computer communicates calibration instructions to the programmable control module via the communication link.

Then, Examiner states:

Carmean teaches an oven calibration system that enables the calibration of a device employing an interactive control system.

To support the combination, Examiner then states,

The motivation for combining Carmean with Kashimoto is to avoid the expense of service calls by remotely controlling the calibration of the oven (see Carmean column 1, lines 21 – 26).

In response, Applicant strongly asserts that there is no motivation to combine Kashimoto with Carmean.

### There Must be a Basis in the Art for Combining or Modifying References

It is well settled that:

[o]bviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

Examiner suggests that the motivation for combining the references is found in the following statement in Carmean (see Carmean column 1, lines 21 – 26):

As a matter of fact, it has been found that the majority of requests for service, in devices of this type, is for adjustment of temperature calibration. Such service calls unnecessarily increase costs to both the manufacturer and the purchaser of such cooking devices.

Applicant suggests that Carmean is not concerned with remote control of an oven for any purpose whatsoever, including calibration. Indeed, neither the word "remote" nor the phrase "remote control" is ever mentioned in Carmean. Rather, Carmean is concerned with providing a method by which an oven user can calibrate his oven without having to go to the expense of ordering a service call. In contrast to Applicant, Carmean's oven is calibrated at the oven control panel (see Carmean FIG. 2).

Moreover, Examiner admits that Kashimoto does not discuss oven calibration at all. Instead, Kashimoto shows only oven control via a remote personal computer. Kashimoto does not disclose oven calibration. Indeed, neither the word "calibrate" nor "calibration" is ever mentioned in Kashimoto.

Nevertheless, Examiner has stated that there is motivation to combine Carmean with Kashimoto "to avoid the expense of service calls by remotely controlling the calibration of the oven." In response, Applicant fails to understand how Examiner finds motivation merely because Carmean states, "service calls unnecessarily increase costs to both the manufacturer and the purchaser of such cooking devices". Applicant asserts that in order to combine these references Examiner must present more than a mere statement of the obvious by Carmean. Examiner must show a true motivation.

Applicant states that for Carmean and Kashimoto there is no such motivation and that these references should not be combined because there is no "teaching, suggestion or incentive" to do so. In just one sentence, Carmean only suggests that certain types of service calls can "unnecessarily increase costs". Moreover, Kashimoto never discusses service calls. Indeed, the only commonality between Carmean and Kashimoto is that

they both are concerned with the broad subject of ovens. Beyond that there are no similarities, no common problem to be solved. Therefore, Applicant respectfully submits that because there is no teaching, suggestion or incentive to combine Kashimoto and Carmean, that Examiner has improperly used Applicant's teaching to hunt through the prior art for the claimed elements and combine them. Therefore, Kashimoto and Carmean should not be combined.

Applicant is not suggesting that he is the inventor of oven calibration. Applicant recognizes that, like Carmean, many others before Applicant knew how to calibrate an oven and therefore Examiner should be able to find many examples of oven calibration in the prior art. However, Applicant is the first to recognize the benefits of remote calibration of an oven. Specifically, Applicant is the first to recognize the benefit of:

A cooking system, comprising:

A) a cooking appliance, comprising:

- i) a programmable control module,
- ii) a heating device controlled by said programmable control module, and
- iii) a cooking location wherein said heating device is in communication with said cooking location to provide heat to said cooking location, and

B) a remote computer in information communication with said programmable control module via a communication link, wherein said remote computer communicates calibration instructions to said programmable control module via said communication link.

#### Other Claim Rejections

Examiner has rejected other Claims under 35 USC 103 as being unpatentable over Kashimoto in view of other references. These other claims rejected by Examiner should be allowable for the reasons stated above.

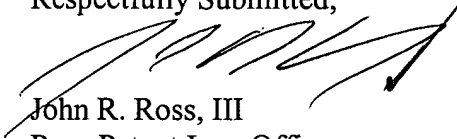
#### Claims 18 - 23

Examiner has stated that Claims 18 – 23 are allowed.

### CONCLUSION

Thus, for all the reasons given above, this application, as the claims are presently limited, define a novel, patentable, and truly valuable invention. Hence allowance of this application is respectfully submitted to be proper and is respectfully solicited.

Respectfully Submitted,



John R. Ross, III  
Ross Patent Law Office  
Regis. No. 43060  
PO Box 2138  
Del Mar, CA 92014  
Phone: 858-755-3122  
Fax: 858-755-3122